

SBA News and Views is a monthly publication of the SBA Wisconsin District Office. Its purpose is to provide Wisconsin lenders and small business leaders with up-to-date information on SBA programs and small business issues. It is distributed at no cost, and the reprinting of articles is encouraged

Serving America's Small Businesses

U.S. Small Business Administration Wisconsin District Office

Eric Ness, District Director
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EPA's "All Appropriate Inquiries" Final Rule

The Environmental Protection Agency's ("EPA") final rule governing "All Appropriate Inquiries" ("AAI") under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") became effective on November 1, 2006. The EPA's final rule includes new requirements for Phase I Environmental Site Assessments ("Phase I") for landowners seeking to qualify for liability protections under CERCLA. The final rule is found at 40 C.F.R. Part 312.

After the date of this notice, SBA will require that 7(a) lenders and Certified Development Companies ("CDCs") comply with EPA's AAI final rule as part of their prudent lending practices and standard environmental due diligence when a Phase I is required pursuant to SOP 50 10. **Accordingly, 7(a) lenders and CDCs must ensure that a Phase I contracted for after the date of this notice meets the requirements of AAI. EPA has determined that a Phase I prepared in accordance with ASTM E1527-05 meets the AAI requirements.**

An AAI-compliant Phase I must be performed by an Environmental Professional. The AAI rule defines an environmental Professional as "a person who possesses sufficient specific education, training, and experience necessary to exercise

professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases...on, at, in, or to a property, sufficient to meet the objectives and performance factors [of the rule]." 40 C.F.R. §312.10(b). An Environmental Professional must:

- Hold a current Professional Engineer's Professional Geologist's license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of three (3) years of full-time relevant experience; or
- Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in §312.21 and have the equivalent of three (3) years of full-time relevant experience; or Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; or
- Have the equivalent of ten (10) years of full-time relevant experience. SBA will issue an amended version of SOP 50 10, Subpart A, Chapter 7, pertaining to environmental policy and incorporating EPA's AAI final rule in the near future.

District Directors must share this procedural notice with CDCs and 7(a) lenders operating within their geographic areas.

SBA Improves Federal Contract Opportunities

New Regulations Agency Scorecards Add Transparency and Accountability

The U.S. Small Business Administration (SBA) announced several measures to help small businesses secure more federal government contracts. The centerpiece of SBA's efforts is a new regulation requiring small businesses to recertify their size status on long-term contracts when a contract is exercised, when a small business is purchased by or merged with another business or at the end of the first five years of a contract.

"This regulation will go a long way toward ensuring that contract awards get in the hands of small business owners, federal agencies get the proper credit toward their small business contracting goals and small business contract awards are fairly and accurately reported," said SBA Administrator Steven C. Preston. "It is a win-win situation for everyone."

This regulation was developed in coordination with the Office of Management and Budget's Office of Federal Procurement Policy (OFPP).

"We need accurate data on business size," said Administrator for the OFPP Paul Denett. "However, small businesses must be given fair opportunity to grow as they perform federal contracts. This rule is intended to strike the right balance between fostering growth and accurate data gathering."

Historically, size status has been determined at the time of the initial offer on the contract and is retained over the life of the contract. However, federal agencies are increasingly using long-term contracts that, with the exercise of contract options, can extend to 20 years. The new regulation does not require termination of

contracts if size status changes, nor does it require changes to contract terms and conditions.

SBA, also in cooperation with OFPP, is announcing a Small Business Procurement Scorecard for 24 federal agencies. The scorecard, which is modeled after the President's Management Agenda, will help more aggressively track and monitor the status of each agency's small business goal achievement.

"This scorecard is intended to increase transparency and accountability in the small business procurement arena," said Administrator Preston. "Additionally, it will highlight successes that can be shared between agencies and result in additional ways to engage the small business contracting community."

In late September, OFPP Administrator Denett and SBA Administrator Preston, issued a memorandum requiring agencies to review their procurement data and identify any necessary changes to help resolve apparent discrepancies in the Federal Procurement Data System.

The SBA also announced that additional procurement personnel will be hired to help identify government contracting opportunities for small businesses and will work with the Administration's Integrated Acquisition Environment initiative to more effectively reduce contract bundling, consider small businesses as part of their overall procurement strategy, and ensure all agency reporting is accurate and reliable."

The recertification regulation will be available November 15, at the Federal Register's Web site at: www.archives.gov/federal-register/the-federal-register/indexes.html. On November 15 and thereafter, click on "Today" at that site to view the regulations.

Size Recertification Regulation for Long-Term Contracts

Questions & Answers

When is small business size status usually determined for a contract?
Historically, small business size status has been determined on the date firms submit their initial priced offers against solicitations for federal contracts. In the past, characterization of firms as "small" lasted for the duration of contracts. The U.S. Small Business Administration (SBA) is issuing a new regulation addressing longer-term contracts (I.E., contracts of more than five year's duration) that continues initial size certification for a maximum of five years, and provides for subsequent "recertification" periodically thereafter.

Why is SBA issuing this size recertification regulation?

The SBA is issuing a size recertification regulation to better ensure that federal agencies receive credit for making contract awards to small businesses on long-term contracts *only so long as the firms that receive such contracts remain, in fact, "small."* This will make federal contract reporting more accurate. More importantly, it will increase the opportunities for small businesses.

How will the size recertification regulation increase federal contract awards to small businesses?

Each year, by law, SBA establishes goals for each federal agency to award a percentage of its contracts to small businesses. Contracts generally span a number of years, including "base" and "option" periods. Before this new regulation, if an option was executed on a contract that was originally awarded to small firm, and the firm subsequently grew to be other than small, the agency would still receive credit for contracting with a small business. Under this regulation, once a firm outgrows the small

business size standard that applies to the contract, the contracting agency will no longer receive credit for the contract. This will encourage agencies to work harder to make opportunities available to small businesses, in order to achieve their small business contracting goals.

How will the size recertification regulation work?

The new regulation requires several things. For **all contracts, regardless of their duration**, small businesses must recertify their size status if they are merged, are acquired by, or acquire other business, or if a contract is novated.

For long-term contracts (over five years' duration) small businesses must recertify their size status at the end of the first five years of the contract, and before execution of every contract option after that. Also, orders against contracts must contain the small business size classification that appears in the contract, and the contractor must meet the small business size standard in order for the agency to receive small business credit.

When small businesses can no longer certify their small business size status, regardless of contract length, agencies can no longer count awards toward small business goals. When size status changes, occur, agencies and contractors must revise records in all applicable federal contract databases.

Does the size recertification regulation affect contract terms?

The effects of the new regulation fall primarily upon federal agencies, preventing them from receiving credit for awards to small businesses, if the contract recipients are no longer small. The regulation does not affect the terms and conditions of contracts.

Does the size recertification

regulation require termination of contracts to firms that are no longer small?

No, the regulation does not require termination of existing contract from firms that can no longer certify that they are small. However, in these cases, contracting agencies can no longer claim small business credit for awards under contracts with such firms.

Why is the effective date of the recertification regulation June 30, 2007?

The new regulation provides for an implementation period. This time is necessary to allow the government to modify the official contract award database, the federal Procurement Data System-Next Generation (FPDS-NG), to capture changes in small business size status. It will also permit contracting agencies to modify "back office" contract writing and reporting systems that feed FPDS-NG. Finally, it will allow the government time to revise the Federal Acquisition Regulations (FAR).

Why is recertification required every five years, and not at some other shorter interval?

Based on the analysis of comments received, five years was a reasonable period of time taking into consideration the operational issues and costs for small businesses and meeting the needs of the agencies to fulfill their missions. For example, many requests for proposals involve a small business incurring large expenses to respond.

The five-year recertification requirement for long-term contracts parallels the small business size certification cycle for short-term contracts. That is, short-term contracts are typically of five years' duration – a one-year base year and four one-year options. Firms certify small business status at the time of bid submission, and recertify such status during the ensuing five-year period only if their

size status changes because they are merged; are acquired by or acquire other businesses; or if contracts are novated.

Long-term contracts are of more than five years' duration, and under the new regulation, firms will certify small business size status at time of bid submission, and will recertify at the end of the first five years of the contract, at any time that options are executed thereafter, and at any time their size status changes because they are merged; are acquired by or acquire other businesses; or if contracts are novated.

What happens if a small business is awarded a contract and in the same fiscal year it is merged, acquired by or acquires another business, or if the contract is novated and the business becomes other than small? The business would be considered small for that year but for any other action involving that contract or a new contract, the business would be considered other than small.

Editor's Notes

TRAINING CALENDAR

Be sure to visit

<http://app1.sba.gov/calendar/states/calendar.cfm?op=group&grp=73> for business training opportunities offered by SBA, SCORE, Small Business Development Centers, Women Business Centers, Procurement Assistance Centers and the Wisconsin Procurement Institute.

This site will become your first stop when looking for training sessions, conferences, and seminars at the federal level but will also include state, local and private activities when they pertain to small business improvement.

SBA October 2006 Loans

Associated Bank

17 Loans for \$1,985,100 – Green Bay

US Bank NA

11 Loans for \$727,600 – Cincinnati, OH

Wells Fargo Bank NA

8 Loans for \$263,000 – San Jose, CA

2 Loans for \$890,000 – Sioux Falls, SD

10 Loans for \$1,153,000

M&I Marshall & Ilsley Bank

9 Loans for \$1,439,800 – Milwaukee

Community Bank & Trust

7 Loans for \$2,063,000 – Sheboygan

Wisconsin Business Development Finance Corp.

7 Loans for \$1,980,000 – Monona

JPMorgan Chase Bank NA

7 Loans for \$303,500 – Houston, TX

Capital One Federal Savings Bank

6 Loans for \$165,000 – McLean, VA

Citizens Bank

5 Loans for \$1,305,000 – Kaukauna

Bank Mutual

4 Loans for \$335,000 – Milwaukee

1 Loan for \$268,000 – Green Bay

5 Loans for \$603,000

Wisconsin Community Bank

3 Loans for \$1,715,000 – Cottage Grove

Twin Cities-Metro Certified Development Corp.

3 Loans for \$1,598,000 – Shoreview, MN

Irwin Union Bank FSB

2 Loans for \$1,376,700 – Louisville, KY

Great Lakes Asset Corporation

2 Loans for \$1,097,000 – Green Bay

CIT Small Business Lending Corporation

2 Loans for \$912,000 – Livingston, NJ

Investors Community Bank

2 Loans for \$575,000 – Manitowoc

Hometown Bank

2 Loans for \$534,000 – Saint Cloud

Park Bank

1 Loan for \$380,000 – Milwaukee

1 Loan for \$50,000 – La Crosse

2 Loans for \$430,000

Community First CU

2 Loans for \$313,000 – Appleton

Oak Bank

2 Loans for \$130,000 – Fitchburg

Business Loan Center, LLC

2 Loans for \$80,000 – Panama City Beach, FL

The Stephenson National Bank & Trust

1 Loan for \$581,000 – Marinette

Green Lake State Bank

1 Loan for \$536,000 – Green Lake

National Exchange Bank & Trust

1 Loan for \$467,500 – Fond du Lac

Charter Bank Eau Claire

1 Loan for \$320,000 – Eau Claire

Middleton Community Bank

1 Loan for \$277,000 – Middleton

First National Bank in Manitowoc

1 Loan for \$203,100 – Manitowoc

Landmark CU

1 Loan for \$125,500 – Chippewa Falls

Citizens First CU

1 Loan for \$120,000 – Oshkosh

Farmers & Merchants State Bank

1 Loan for \$77,500 – Waterloo

Monona State Bank

1 Loan for \$75,000 – Monona

Pyramax Bank FSB

1 Loan for \$70,000 – Greenfield

Community State Bank

1 Loan for \$50,000 – Union Grove

American National Bank – Fox Cities

1 Loan for \$25,000 – Appleton

AnchorBank FSB

1 Loan for \$25,000 – Madison

State Bank of Cross Plains

1 Loan for \$25,000 – Cross Plains

The Park Bank

1 Loan for \$25,000 – Madison

National City Bank

1 Loan for \$20,000 – Cleveland, OH

SBA October 2006 MicroLoans

Northeast Entrepreneur Fund, Inc.

12 Loans for \$15,110

Wisconsin Women's Business Initiative Corporation

1 Loan for \$10,000